

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

MICHELLE A. TASSEFF as Executrix of the Estate of
JOSEPHINE EWING

(b) County of Residence of First Listed Plaintiff Erie

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Meyers Roth Law Group
21 Princeton Place
Orchard Park, NY 14127

DEFENDANTS

United States of America

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|---------------------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input checked="" type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input checked="" type="checkbox"/> 362 Personal Injury - Medical Malpractice PERSONAL INJURY <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District (specify)
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
42 USC Sec 233

Brief description of cause:
Medical Malpractice against an HRSA public health center

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$
\$900,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

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United States District Court
Western District of New York

MICHELLE A. TASSEFF as Executrix of the Estate of
JOSEPHINE EWING,

Plaintiff

COMPLAINT

-v-

United States of America

Defendant.

Plaintiff, MICHELLE A. TASSEFF, as Executor of the Estate of JOSEPHINE EWING deceased, by and through her attorneys, Meyers Buth Law Group, PLLC, for her Complaint in the subject action states as follows:

1. That at the time of the incidents in question, the plaintiff, MICHELLE A TASSEFF, and Decedent JOSEPHINE EWING were citizens of the United States of America residing at 54 Cloister Court, Blasdell, NY 14219.

2. JOSEPHINE EWING was a resident of the county of Erie and died on March 15, 2019.

3. On January 29, 2021, MICHELLE A. TASSEFF was issued Letters Testamentary by the Erie County Surrogate as the Executrix of the Estate of JOSEPHINE EWING who died on March 15, 2019.

AS AND FOR A FIRST CAUSE OF ACTION FOR PERSONAL INJURIES

4. That, upon information and belief and at all times hereinafter mentioned, the Defendant CHRISTOPHER BIONDOLILLO, M.D., was and still is a physician duly licensed to practice his profession in the State of New York and held himself out to the public as a skilled and competent physician capable of properly and skillfully examining patients, of making diagnoses, and properly and skillfully treating, advising and caring for patients, and generally practicing the specialty of Family Medicine.

5. That, upon information and belief, and at all times hereinafter mentioned, the defendant, NEIGHBORHOOD HEALTH CENTER, was an organization duly organized and existing under the laws of the State of New York, having its principal place of business at 4233 Lake Avenue, Blasdell, New York, in the County of Erie and having the power to sue and to be sued.

6. That, upon information and belief, and at all times hereinafter mentioned, the defendant, NEIGHBORHOOD HEALTH CENTER, held out its staff of physicians, residents, nurses, technicians and other medical personnel employed there as having the proper and requisite skills and learning required to render skillful and proper care and treatment of patients including examination, diagnosis and management of patients coming under its care and treatment.

7. That, upon information and belief, and at all times hereinafter mentioned, defendant, CHRISTOPHER BIONDOLILLO, M.D., was a member, partner, agent and/or employee of defendant, NEIGHBORHOOD HEALTH CENTER.

8. That, upon information and belief, and at all times hereinafter mentioned, the defendant, NORTHWEST BUFFALO COMMUNITY HEALTH CENTER, (hereinafter referred to as "NORTHWEST") was an organization duly organized and existing under the laws of the

State of New York, having its principal place of business at 155 Lawn Avenue, Buffalo, New York, in the County of Erie and having the power to sue and to be sued.

9. That, upon information and belief, and at all times hereinafter mentioned, the defendant, NORTHWEST, held out its staff of physicians, residents, nurses, technicians and other medical personnel employed there as having the proper and requisite skills and learning required to render skillful and proper care and treatment of patients including examination, diagnosis and management of patients coming under its care and treatment.

10. That, upon information and belief, and at all times hereinafter mentioned, defendant, CHRISTOPHER BIONDOLILLO, M.D., was a member, partner, agent and/or employee of defendant, NORTHWEST.

11. That the Health Resources and Services Administration (HRSA) deemed Northwest Buffalo Community Health Center to be an employee of the Public Health Center, Neighborhood Health Center and Christopher Biondolillo M.D., were thereby deemed to be employees of the United States Public Health Service within the exclusive remedy provision of 42 U.S.C. Sec. 233(a).

12. That 42 U.S.C. Sec. 233(a) make exclusive the remedy against the United States, as provided by 28 U.S.C. Sec. 1346(b) and Sec. 2672 damages for personal injury resulting from performance of medical surgical related functions...by any employee...of the Public Health Service while acting within the scope of his office or employment. 42 U.S.C. Sec. 233(a) provides that, "upon a certification by the Attorney General that the defendant was acting within the scope of his employment at the time of the incident out of which the suit arose, any such civil action or proceeding shall be deemed a tort action brought against the United States under the provision of title 28 and all references thereto."

13. That on June 8, 2021, the United States Attorney for the Western District of New York certified Christopher Biondolillo MD, Neighborhood Health Center and Northwest Buffalo Community Health Center, were acting within the scope of their employment with respect to the claims arising from the care and treatment of Josephine Ewing.

14. Venue in the Western District of New York is proper pursuant to 28 U.S.C. Sec. 1402 and 28 U.S.C. Sec. 1391 on the basis that a substantial part of the acts or omissions giving rise to the claim occurred within the jurisdiction of said judicial district, and on the basis that Plaintiff resided in said judicial district.

15. The amount in controversy in this matter, exclusive of interests and costs, is in excess of \$75,000.

16. This action arises out of the Federal Tort Claims Act (FTCA), 28 U.S.C. Sec. 1346. Pursuant to the FTCA, plaintiff presented her claim to the U.S. Department of Health and Human Services, HHS, the federal agency out of whose activities the claim arose. Plaintiff's claim was presented in the form of an executed SF-95, including a description of a basis of the claim, a description of the nature and extent of the injury, and a demand for damages in sum certain, all in accordance with 28 U.S.C. Sec. 2675 and 28 CFR Part 14.

17. The administrative claim was received by the U.S. Department of Health and Human Services on March 8, 2021, more than six months prior to the commencement of this action. The agency failed to issue a final disposition of the claim during that period, so plaintiff's claim is deemed denied. Therefore, pursuant to 28 U.S.C. Sec. 2675, plaintiff may now properly commence this action against the United States in this Court.

18. Plaintiff has duly complied with all conditions precedent to the commencement of this action.

19. That, upon information and belief, and at all times hereinafter mentioned, on or about 11/10/2017 and thereafter, the Decedent, JOSEPHINE EWING, came under the care and treatment of Defendant, CHRISTOPHER BIONDOLILLO, M.D., NEIGHBORHOOD HEALTH CENTER AND NORTHWEST BUFFALO COMMUNITY HEALTH CENTER, and remained under their care and treatment until her death on 3/15/2019.

20. That the care rendered to decedent by defendants, and each of them, was negligently, carelessly and unskillfully performed.

21. That solely due to the negligence of the defendants, and each of them, and as a direct and proximate result of the failure of the defendants to properly and promptly diagnosis and treat her symptoms and condition, the decedent, JOSEPHINE EWING, suffered severe and permanent injuries all of which ultimately resulted in her death on March 15, 2019.

22. That by virtue of the foregoing, decedent experienced great pain, suffering and anguish prior to her death, all to her damage in the amount of \$450,000.

SECOND CAUSE OF ACTION FOR WRONGFUL DEATH

23. That plaintiff repeats and realleges paragraphs 1 through 22, the same as if each were more fully set forth herein.

24. That decedent, JOSEPHINE EWING, died as a direct and proximate result of the failure of the defendants, and each of them, to properly examine, diagnose and promptly treat JOSEPHINE EWING from 11/10/2017 until her death on 3/15/2019.

25. That decedent, JOSEPHINE EWING, left surviving her as her heirs and distributees, decedent's children, MICHELLE A. TASSEFF and DAVID W. EWING.

26. That prior to the negligence and malpractice of defendants, decedent, JOSEPHINE EWING, was an able-bodied woman who devoted herself to the welfare and comfort of her

family, and was the primary caretaker for DAVID W. EWING a disabled adult currently living with Downs Syndrome. By virtue of her wrongful death, decedent's children have been deprived of the comfort and society of decedent, JOSEPHINE EWING, and of her services, and of the moral, intellectual, physical and spiritual care and attention, guidance and training which only a mother can provide to her children.

27. That on January 29, 2021, MICHELLE A. TASSEFF was awarded Letters Testamentary by the Erie County Surrogate.

28. That by reason of all of the aforesaid, the Plaintiff incurred and became liable for and/or paid for the funeral and burial expenses and the medical and hospital expenses on behalf of decedent.

29. That by reason of the foregoing, Plaintiff demands compensatory damages for the wrongful death of JOSHEPHINE EWING in the amount of \$450,000.

WHEREFORE, Plaintiff demand judgment against the defendant In the FIRST CAUSE OF ACTION, in the amount of \$450,000, for the personal injuries and conscious pain and suffering of the decedent, JOSEPHINE EWING, and \$450,000 in the SECOND CAUSE OF ACTION, money damages in a sum sufficient to compensate Plaintiff, MICHELLE A. TASSEFF for the wrongful death of decedent, JOSEPHINE EWING, plus the costs and disbursements of this action.

Dated: September 20, 2021

Respectfully submitted

/s/ Patrick J. Maloney

MEYERS BUTH LAW GROUP, PLLC
Patrick J. Maloney, Esq., Of Counsel
Attorneys for Plaintiff
21 Princeton Place
Orchard Park, NY. 14127
Phone: 716-508-8598

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

MICHELLE TASSEFF as Executrix of the Estate of
JOSEPHINE EWING

Plaintiff(s)

v.

United States of America

Defendant(s)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* United States Department of Justice
Office of the Attorney General
950 Pennsylvania Avenue NW.
Washington, D.C. 20530-0001

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Patrick J. Maloney, Esq.
21 Princeton Place
Orchard Park, NY 14127

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

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